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No. 85 - 608

Supreme Court, U.S.

FILED

MAY 5 1988

JOSEPH F. SPANIOL, JR.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1985

**THE STATE OF ILLINOIS, *Petitioner,***

**vs.**

**ALBERT KRULL, et al., *Respondents.***

**On Writ Of Certiorari To The Supreme Court Of Illinois**

**JOINT APPENDIX**

**MIRIAM F. MIQUELON\***  
Miquelon and Associates, Ltd.  
Three First National Plaza  
Suite 600  
Chicago, Illinois 60602  
*Counsel for Respondent*  
*Albert Krull*

**LOUIS B. GARIPPO, ESQ.\***  
100 West Monroe Street  
Suite 1800  
Chicago, Illinois 60603  
*Counsel for Respondent*  
*Salvatore Mucerino*

**JAMES M. OBBISH, ESQ.\***  
Kane, Obbish & Propes  
100 West Monroe Street  
Suite 1800  
Chicago, Illinois 60603  
*Counsel for Respondent*  
*George Lucas*

**NEIL F. HARTIGAN**  
Attorney General, State of Illinois  
**ROMA J. STEWART**  
Solicitor General, State of Illinois  
**MARK L. ROTERT\***  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 917-2570  
*Counsel for Petitioner*

\* Counsel of Record

## TABLE OF CONTENTS

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	PAGE
Chronological List of Relevant Docket Entries . . . .	1
Complaints, Filed July 5, 1981 . . . . .	2
Respondents' Motion to Suppress Evidence, Filed September 18, 1981 . . . . .	13
Report of Proceedings had on the Hearing on Respondents' Motion to Suppress Evidence, September 25, 1981 . . . . .	18
Order of the Appellate Court of Illinois, First Judicial District, disposing of Appeal Under Illi- nois Supreme Court Rule 23, Filed November 23, 1983 . . . . .	22
Report of Proceedings had on Remand from the Appellate Court of Illinois, July 9, 1984 . . .	27
Text of Ill. Rev. Stat. 1979, Ch. 95½, Sec. 5-401 .	36
Stipulation in the United States District Court for the Northern District of Illinois . . . . .	38

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The Opinion of the Supreme Court of Illinois Is Reported at 107 Ill. 2d 107, 481 N.E.2d 703 (1985) and is Included in the Petition for Certiorari at the Appendix.

The Opinion of the United States District Court for the Northern District of Illinois Declaring Ill. Rev. Stat. 1979, Ch. 95½, Sec. 5-401 Unconstitutional Appears in *Bionic Auto Parts and Sales, Inc. et al. v. Tyrone C. Fahner*, 518 F. Supp. 582 (N.D. Ill. 1981) and the Opinion of the Seventh Circuit Court of Appeals in that Case Appears at 721 F.2d 1072 (7th Cir. 1983).

**No. 85 - 608**

**IN THE  
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**THE STATE OF ILLINOIS, *Petitioner,*  
vs.  
ALBERT KRULL, et al., *Respondents.***

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**On Writ Of Certiorari To The Supreme Court Of Illinois**

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**JOINT APPENDIX**

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CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

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DATE	ITEM
July 5, 1981	Complaints filed in the Circuit Court of Cook County, Illinois
September 18, 1981	Respondents' Motion to Suppress Evidence Filed
September 25, 1981	Order of the Honorable Martin F. Hogan Granting Respondents' Motion to Suppress Evidence
October 14, 1981	Notice of Appeal Filed
November 23, 1983	Order of the Appellate Court of Illinois, First Judicial District, Disposing of Appeal Under Illinois Supreme Court Rule 23 and Remanding to the Trial Court for Further Proceedings
July 9, 1984	Order of the Honorable Martin F. Hogan Granting Respondents' Motion to Suppress Evidence
August 7, 1984	Notice of Appeal Filed
July 17, 1985	Opinion of the Supreme Court of Illinois



IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219293  
Salvatore Mucerino, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

Detective Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Salvatore Mucerino has, on or about July 5, 1981 at Cook County Illinois committed the offense of possession of stolen motor vehicle in that he was not entitled to the possession of a motor vehicle, and did possess a 1969 AMC Rambler V.I.N. A9A050A284339 knowing it to have been stolen. Said vehicle was the property of Kevin Daly, in violation of Chapter 95½, Section 4-103a1, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

Detective Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me July 30, 1981.

/s/ Morgan M. Finley, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219294-01  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain a junking certificate of title as required by law. The vehicle involved is a 1969 Chevrolet V.I.N. 164479F099576, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me July 30, 1981.

/s/ Morgan M. Finley, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219294-02  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain a junking certificate of title as required by law. Vehicle involved is a 1972 American Motors Hornet V.I.N. A2A057E285867, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me July 30, 1981.

/s/ Morgan M. Finley, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219294-03  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain junking certificate of title, as required by law. Vehicle involved is a 1978 International Scout V.I.N. H0062HGD44014, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me July 30, 1981.

/s/ Morgan M. Finley, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219294-04  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain junking certificate of title as required by law. Vehicle involved is a 1971 Dodge V.I.N. DH41L1D269531, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me July 30, 1981.

/s/ Morgan M. Finley, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219365-01  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain a junking certificate of title as required by law. The vehicle involved is a 1969 Chevrolet V.I.N. 164479F099576, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*



IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-219365-02  
Albert G. Krull, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois Agent Leilan K. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that Albert G. Krull has, on or about July 20, 1981 at Cook County Illinois committed the offense of failure to surrender title in that he failed to surrender certificate of title to obtain a junking certificate of title as required by law. Vehicle involved is a 1972 American Motors Hornet V.I.N. A2A057E285867, in violation of Chapter 95½, Section 3-116, Illinois Revised Statutes.

/s/ Leilan K. McNally #12157

State of Illinois  
County of Cook—ss.

State of Illinois Agent Leilan K. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Leilan K. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-213926-01  
George Lucas, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

Alfred Sims complainant, now appears before The Circuit Court of Cook County and states that George Lucas has, on or about 5 July 1981 at 3315 West 31st. Street, Chicago, Illinois committed the offense of Possession Of Stolen Vehicle in that he not being entitled to possession of a vehicle, to wit: 1971 Dodge, bearing VIN DH41L1D269531, possessed said vehicle, knowing it to have been stolen, in violation of Chapter 95½, Section 4-103 A-1, Illinois Revised Statutes.

/s/ L. K. McNally #12157

State of Illinois  
County of Cook—ss.

Alfred Sims being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ L. K. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*



IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-213926-02  
George Lucas, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

John O'Connor complainant, now appears before The Circuit Court of Cook County and states that George Lucas has, on or about 5 July 1981 at 3315 West 31st. Street, Chicago, Illinois committed the offense of Possession Of Stolen Vehicle in that he not being entitled to possession of a vehicle, to wit: 1972 American Motors Hornet, bearing VIN#A2A057E285867, possessed said vehicle, knowing it to have been stolen, in violation of Chapter 95½, Section 4-103-A-1, Illinois Revised Statutes.

/s/ Det. L. K. McNally #12157

State of Illinois  
County of Cook—ss.

John O'Connor being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Det. L. K. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-213926-03  
George Lucas, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

Milton Medlock complainant, now appears before The Circuit Court of Cook County and states that George Lucas has, on or about 5 July 1981 at 3315 West 31st Street, Chicago, Illinois committed the offense of Possession Of Stolen Vehicle in that he not being entitled to possession of a vehicle, to wit; 1969 Chevrolet, bearing VIN 164479F099576, possessed said vehicle, knowing it to have been stolen, in violation of Chapter 95½, Section 4-103A-1, Illinois Revised Statutes.

/s/ Det. L. K. McNally #12157

State of Illinois  
County of Cook—ss.

Milton Medlock being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Det. L. K. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*

IN THE  
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois, Plaintiff,  
v. No. 81 MC1-213926-04  
George Lucas, Defendant.

COMPLAINT FOR PRELIMINARY EXAMINATION

State of Illinois, Det. L. McNally #12157 complainant, now appears before The Circuit Court of Cook County and states that George Lucas has, on or about 5 July 1981 at 3315 West 31st Street, Chicago, Illinois committed the offense of False Manufacturer's Identification Number in that he possessed a motor vehicle, to wit; 1978 International vehicle, on which the manufacturer's identification number had been removed and said, George Lucas, had knowledge that said number had been removed, in violation of Chapter 95½, Section 4-103, A-4, Illinois Revised Statutes.

/s/ L. McNally #12157

State of Illinois  
County of Cook—ss.

State of Ill. Det. L. McNally #12157 being first duly sworn, on his oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

/s/ Det. L. McNally #12157

Subscribed and sworn to before me \_\_\_\_\_,  
19\_\_\_\_.

/s/ \_\_\_\_\_, Clerk

\* \* \* \* \*

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,  
  
No. v.  
ALBERT G. KRULL,  
  
*Plaintiff,*  
  
*Defendant.*

MOTION TO SUPPRESS EVIDENCE  
ILLEGALLY SEIZED

Now comes the Defendant, ALBERT G. KRULL, by his attorney, Miriam F. Miquelon, and pursuant to Chapter 38, Section 114-12(1) (Ill. Rev. Stat., 1979) submits this Motion to Suppress Evidence and in support states as follows:

1. Defendant, Krull is charged in the instant proceeding with violations of Chapter 95½, Section 3-116(e) for Defendant's alleged failure to surrender certificates of title for certain vehicles described as 1971 Dodge V.I.N. DH41L1D269531 and 1978 International Scout V.I.N. H0062H6D44014. The respective vehicles are described in two separate complaints that serve as the basis of the instant charge. (Exhibit A).

2. On or about July 20, 1981, Agent Leilan K. McNally, #1257, entered the business premises of the Action, Iron & Metal, Inc., for the ostensible purpose of performing a records inspection pursuant to Chapter 95½, Section 5-401(e), (Ill. Rev. Stat., 1979). (Exhibit B) The agent did not have a search warrant in his possession at the time



of entry nor did the Defendant consent to the agent's entry onto the business premises for any purpose.

3. Defendant, Krull is licensed by the State of Illinois, pursuant to Chapter 95½, Section 5-301 to engage in the business of acquiring, wrecking, recycling, rebuilding and selling automotive parts. Defendant, Krull hold the license for Action, Iron & Metal, Inc.

4. During his review of the business records, Agent McNally conducted a warrantless search of the business premises. Presumably the search was conducted pursuant to the provisions of Chapter 95½, Section 5-401(e). It is unclear that Agent McNally located the above-described vehicles while conducting the search. The complaint alleges that defendant-licensee failed to surrender the certificate of title on either vehicle. Upon information and belief, the vehicles that are the subject of the instant complaint were seized by Agent McNally and towed from the business premises.

5. The confusion as to the precise date of seizure of the vehicles is based upon the following: the vehicle described as 1971 Dodge V.I.N. DH41L1D269531 is included in Agent McNally's police report dated July 5, 1981. (Exhibit G) There he states that the *same* vehicle was purchased by one George Lucas on or about July 3, 1981, which vehicle apparently served as the basis for Lucas' arrest. The report also refers to an International Scout but omits a reference to the V.I.N. number. Defendant submits that this vehicle may be one in the same as that which serves as the basis of the instant complaint. However, Agent McNally likewise contends that this vehicle was purchased by Lucas on July 3, 1981. Apparently, Agent McNally waited for some 17 days to request Defendant Krull to produce a certificate of title for vehicles that McNally had already seized. Defendant is likewise not

charged with having committed the offense on July 3, 1981, but on July 20, 1981. Defendant submits that he was not on the business premises on July 3, 1981, and had no knowledge of Lucas' business activity regarding the above-referenced vehicles.

6. On March 10, 1981, a Complaint for Declaratory and Injunctive Relief, No. 80 C 3696, was filed in the Federal District Court for the Northern District of Illinois and assigned to the Honorable Milton I. Shadur. The Complaint raised various questions of law and fact regarding the constitutionality of Chapter 95½, Sections 5-401 et seq. Judge Shadur issued an opinion declaring the provisions of the statute, permitting warrantless entry for the purpose of searching the records and business premises, of the licensee, unconstitutional.

7. On this basis, defendant-licensee moves to suppress evidence of the vehicles seized and any information obtained by law enforcement officers pursuant to a review of the records and/or business premises of the licensee. That defendant-licensee has standing to contest the search and seizure under these circumstances is implicit from the Supreme Court's opinions in the cases, *United States v. Biswell*, 406 U.S. 311 (1972) and *Colonnade Corp. v. United*, 397 U.S. 72 (1970). In those cases the licensee moved to suppress evidence on the basis that the statute authorizing warrantless entry and inspection was unconstitutional.

Regarding the issue of the validity of the search, the Supreme Court in *Biswell*, *supra*, concluded that:

In the context of a regulatory inspection system of business premises that is carefully limited in time, place, and scope, the legality of the search depends not on consent but on the authority of a valid statute. 406 U.S. at 315.



In the instant case Judge Shadur found that the regulatory inspection scheme contained in Section 5-401 et seq. failed to circumscribe the time, place and scope of the search and was therefore, unconstitutional. The instant search was predicated on the authority of an invalid and unconstitutional statute and therefore, based on the principles of *Biswell*, is unconstitutional.

Evidence derived from this search will be introduced in the preliminary hearing and/or trial of this case. Where evidence is sought to be introduced in a trial subsequent to a finding that it was obtained pursuant to an unconstitutional statute the evidence should be suppressed. See, *Fuller v. Alaska*, 393 U.S. 80 (1968).<sup>1</sup>

Moreover, the scope and legitimacy of a search must be strictly tied to and justified by the circumstances that rendered its initiation permissible. See, *People v. Lee*, 48 Ill.2d 272, 269 N.E.2d 488, 490-491. The instant search was invalid because the statute authorizing the search was found unconstitutional. Therefore, the evidence seized should be suppressed.

Where a warrantless search is conducted, it is settled that the burden is on those seeking an exemption from the requirements of the Fourth Amendment to show a need for it. *People v. Bayles*, 76 Ill.App.3d 843, 395 N.E. 2d 663, 669 (5th Dist. 1979). The people will be unable under any recognized exception to the warrant requirement to meet this burden.

<sup>1</sup> In *Fuller*, the court found that once its opinion issued indicating that evidence violative of §605 of the Federal Communications Act was not admissible in a State trial, such ruling was to be applied only to trials in which the evidence is sought to be introduced after the date of the decision.

WHEREFORE, the Defendant, ALBERT G. KRULL, by his attorney, requests the Court to suppress any evidence derived from the search of the licensee's records and/or business premises or from investigative leads discovered as a result of the search and for such other and further relief as the Court deems necessary in the interests of justice.

Respectfully submitted,

/s/ MIRIAM F. MIQUELON, Attorney for  
Defendant, Albert G. Krull.

Miquelon & Cotter, Ltd.  
79 West Monroe Street  
Suite 1010  
Chicago, Illinois 60603  
(312) 853-0100

Dated: Sept. 18, 1981

STATE OF ILLINOIS  
COUNTY OF COOK-SS:

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT - MUNICIPAL DIVISION

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Branch 64

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THE PEOPLE OF THE STATE OF ILLINOIS

-vs-

SALVATORE MUCERINO, ALBERT KRULL, GEORGE  
LUCAS, JOHN KANDYBA, and JOSEPH KRAL

[1]\* REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above entitled cause came on for hearing on the 25th day of September, A.D., 1981, before the Honorable MARTIN F. HOGAN, Judge of said Court.

APPEARANCES:

HON. RICHARD M. DALEY, JR.,  
State's Attorney of Cook County, by;

MR. STEVEN C. RUECKERT,  
Assistant State's Attorney,  
on behalf of the People;

---

\* Numbers in brackets refer to the Official Court Reporter's pagination of the Report of Proceedings.

MR. LOUIS GARIPPO,

on behalf of Defendant Mucerino;

MS. MIRIAM MICQUELON,

on behalf of Defendant Albert Krull;

MR. JAMES OBBISH,

on behalf of Defendants Lucas, Kandyba, and Kral.

[29] THE COURT: Now, do you want to argue the motion? There's already been some statements made by—

MR. RUECKERT: They can go ahead.

THE COURT: Mr. Obbish, do you have any argument?

MR. OBBISH: Judge, my argument will be very brief.

It's obvious here, based on the officer's testimony, that the only basis for his search on July 5, 1981, was pursuant to the Statute of Chapter 95½, and for no other reason. He had no other probable cause. He had no arrest warrant for anyone on the premises or anyone he expected to find on the premises. He had no search warrant for the specific premises of Action Iron and Metal on the date in question; and without any further probable cause, he acted under what has now been determined to have been an unConstitutional Statute. I'd ask that the motion be sustained as to Mr. Lucas.

It's clearly shown that Mr. Lucas has very strong standing. He's there on July 5. He's the person in charge.

MR. RUECKERT: Is that it?

THE COURT: Yes. Go ahead.

MR. RUECKERT: First of all, I would again renew the motion as to Mr. Mucerino. My argument as to him would be only that. Second of all, the officer testified that [30] the first thing he did when he went in there was to ask Mr. Lucas to see the license of the building and the records.

Even under the order that Judge Shadur entered, that part is still legal. You can still do that. After that, he asked Mr. Lucas, who said, "I'm in charge here."

Mr. Lucas is the person who showed him the records. Mr. Lucas was the one taking the cars in. It's clear he's the only one there operating the business at that time. The officer testified when he went in there and asked for--after looking for the records, he asked Mr. Lucas if he could look around. Mr. Lucas said, "Sure, go right ahead."

That's a consent search. There was no warrant here. But Mr. Lucas gave consent for the officer to search. That's what he did.

I ask that the motion be denied.

THE COURT: All right. Mr. Lucas gave consent because he knew he couldn't withhold it pursuant to the Statute. This is not consent. This is merely allowing the officers to do what the defendant presumed the officer had a right to do at that time.

He knew he was authorized to go on there and walk around, so what's he going to say? No, you can't?

[31] I think it's unrealistic to believe that the consent was voluntary. It was done under duress of the Statute. That's how the consent was given.

MR. RUECKERT: Which, at the time, Judge, was legal. On July 5, it was legal.

THE COURT: I understand that.

Now, this prosecution is commencing based on a search that was conducted under a Statute which allowed it at the time it was made. It was a permissible activity.

Subsequent to the search and arrest, there was a declaration of unConstitutionality of that search. Now, it's the opinion of this Court that the subsequent declaration of unConstitutionality of that Statute affects all pending prosecutions not completed. And therefore, I'm going to

sustain the motion based on the District Court's ruling of unConstitutionality.

I believe once the Statute is declared tainted, it's tainted forever and all prosecutions that have not been completed to judgment. That's the ruling of this Court.

MR. GARIPPO: As to all defendants?

THE COURT: As to all defendants.

MS. MICQUELON: Thank you, your Honor.

MR. OBBISH: State have a motion?



FOURTH DIVISION  
November 23, 1983

81-2621, 81-2622, 81-2623  
(Consolidated)

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,  
*Plaintiff-Appellant,*  
vs.

ALBERT KRULL, SALVATORE MUCERINO, and  
GEORGE LUCAS,  
*Defendants-Appellees.*

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Appeal from the Circuit Court of Cook County.  
Honorable Martin F. Hogan, Judge Presiding.

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ORDER DISPOSING OF APPEAL  
UNDER SUPREME COURT RULE 23

The defendants in the present consolidated appeals were charged with several various motor vehicle violations either involving possession of stolen motor vehicles, failure to surrender proper certificates of titles or failure to obtain a junking certificate as required by statute. (Ill. Rev. Stat. 1981, ch. 95½, pars. 4-103(a)(1), 4-103(a)(4), and 3-116(c).) The court granted the defendants' motions to suppress evidence and the State has appealed. The State argues

that the warrantless administrative search without probable cause conducted under section 5-401(e) of the Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401(e)) was constitutional; thereby justifying a police search in this instance. Alternatively, the State argues that the officers in question acted in good faith when they relied on this statute should it be deemed unconstitutional. Defendants, as appellees, have not filed a brief in this matter, however, in view of our disposition of this case, we do not find that their failure to do so affects our disposition.

The facts surrounding the quashing of the search warrant revolve generally about the testimony of Officer McNally, who at 10:30 a.m. on July 5, 1981, entered the Action Iron and Metal Company yard and property, after he saw tow trucks bring several vehicles inside the grounds. McNally did not have an arrest warrant for defendant Lucas whom he encountered therein. Lucas said he was in charge of the premises. The defendant Krull was apparently the licensee of the premises, but he was not present. About one hour after the officer entered the premises, defendant Mucerino appeared.

The officer testified that he asked Lucas if he could look around and Lucas responded that the operation was open for business and that the officer could inspect the premises. Allegedly during the inspection the remnants of several stolen cars were uncovered, and one vehicle on the premises had a vehicle identification tag which had been removed.

The statute in question is section 5-401(e) of the Illinois Vehicle Code which provides:

"Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace

officer for inspection at any reasonable time during the night or day. Such inspection may include examination of the premises of the licensee's established place of business for the purpose of determining the accuracy of required records."

During the hearing on the motion to suppress, the trial court was advised that one day following the search in question, a judge for the Federal district court of the Northern District of Illinois had found that section 5-401(e) was unconstitutional because it authorized warrantless administrative searches of businesses dealing in automotive parts and scrap processing, and that the district court had entered an injunction precluding the enforcement of the statute. *Bionic Auto Parts and Sales, Inc. v. Fahner* (N.D. Ill. 1981), 518 F. Supp. 582.

In rendering its decision in this case the trial court found that defendant Lucas had not consented to the search of the premises by the officer; that defendant Mucerino had standing to challenge the search; and because the district court in *Bionic Auto Parts* had declared the statute unconstitutional, even a prior search would be invalidated.

Recently the Federal court of appeals in *Bionic Auto Parts and Sales, Inc. v. Fahner* (7th Cir. 1983), \_\_\_\_ F.2d \_\_\_\_, partially set aside the district court's judgment. The court of appeals specifically declined to reach the constitutionality of section 5-401(e). Rather it considered that a newly-enacted statute concerning these administrative searches (Ill. Rev. Stat. 1982 Supp., Ch. 95½, par. 5-403, effective January 1, 1983) should be the governing law. The court of appeals concluded, in relevant part, that warrantless inspections authorized thereunder did not contravene Federal fourth amendment constitutional rights.

The *Bionic Auto Parts* case involved a civil action as compared to the present criminal matter. Therefore, in order to avoid any claim of an *ex post facto* violation, we believe that section 5-401(e) is still applicable to the present case.

However, based on recently evolving considerations it appears appropriate to vacate the judgment of the circuit court. In *Illinois v. Gates* (1983), \_\_\_\_ U.S. \_\_\_\_, 76 L. Ed. 2d 527, 103 S. Ct. 2317, the Supreme Court substantially modified its prior approach to validate the reliability of an informant for purposes of establishing probable cause to issue a search warrant. In so doing the Court did not consider the issue before it of whether the evidentiary seizure in question could be validated because the police had acted in good faith. Currently the Supreme Court has several matters before it concerning the issue of whether the good-faith conduct of police may otherwise validate evidentiary seizures deemed to be improper. See discussion in 52 U.S.L.W. 3201-3202.

In the present case the State argues that the police acted in good faith. This contention might be of significant import in the ultimate resolution of this case. However, we believe that this assertion requires a factual determination by the trial court. The matter should therefore be remanded for that determination in order that we might then evaluate the State's claim.

Further, the trial court in this instance accepted the action of the district court in *Bionic Auto Parts* as fully determinative concerning the resolution of the constitutionality of section 5-401(e). The court of appeals has now vacated the judgment of the district court insofar as it applies to the present case. Consequently, we believe that upon remand the trial court might also reconsider the con-



stitutionality of section 5-401(e) under which Officer McNally conducted the search in question. This will also permit the circuit court to re-examine the question of the standing of defendant Mucerino and whether the record properly established his right to question the warrantless administrative search conducted by the officer.

Accordingly, the judgment of the circuit court is vacated and the cause remanded for further proceedings consistent with this order.

Dated at Chicago, Illinois, this 23rd day of November, 1983.

Romiti, P.J., Jiganti, J., and Linn, J.

STATE OF ILLINOIS  
COUNTY OF COOK—SS:

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT — MUNICIPAL DIVISION  
FIRST DISTRICT

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Room 1108  
81-219294, 81-219365,  
81-219293, 81-213926

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THE PEOPLE OF THE STATE OF ILLINOIS

-vs-

ALBERT KRULL, GEORGE LUCAS, and SALVATORE  
MUCERINO, et al.

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[1]\* REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above entitled cause came on for hearing before the Honorable MARTIN F. HOGAN JR., Judge of said Court on the 9th day of July, A.D., 1984.

APPEARANCES:

HON. RICHARD M. DALEY, State's  
Attorney of Cook County, by:  
MS. CHERYL CESARIO,  
Assistant State's Attorney,  
on behalf of the People;

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\* Numbers in brackets refer to the Official Court Reporter's pagination of the Report of Proceedings.



MR. LOUIS B. GARIPPO,  
on behalf of Mr. Mucerino;

MR. JAMES M. OBBISH,  
on behalf of Mr. Lucas;

[2] MR. MARIAM MIQUELON,  
on behalf of Mr. Krull.

[3] THE COURT: Do you want to step up here, and we'll discuss this?

People versus Mucerino, et al.

MR. OBBISH: Good afternoon, your Honor. For the record, James Obbish on behalf of George Lucas.

MR. GARIPPO: Louis Garippo, on behalf of the Defendant Salvatore Mucerino.

MR. MIQUELON: Mariam Miquelon, on behalf of Defendant Krull.

MS. CESARIO: Cheryl Cesario, State's Attorney, on behalf of the State.

THE COURT: We're all here pursuant to direction of the appellate court for us to review what we had done earlier.

Everyone has filed their purported findings of fact and conclusions of law, suggested orders, and also objections to findings of fact, on behalf of the Defendants, objecting to certain things that the State has written.

Of course, each side has editorialized the facts just a little bit in favor of their particular positions.

Now, if you want me to, I can recite the [4] facts as I perceive them, or we can let the record stand for itself.

I don't know if this is going back on appeal after what we do here today.

But in any event my prior ruling was that Detective McNulty entered the premises upon which Mr. Krull was the manager of the apartment, or at that time, I think

it was—he was licensed to Mr. Lucas. He was licensed to Mr. Lucas. He was on the premises pursuant to the authority provided him in the Illinois Motor Vehicle Code of Section 5-401(e), which said these officers can go on the premises to inspect the records at any time, day or night. And then they had the authority to verify the accuracy of the records required to be kept pursuant to another section, and rules of the Secretary of State.

That's the reason Officer McNulty was there.

He did indicate he saw four or five cars attached to various tow trucks being pulled in there, apparently they were being purchased by Mr. Krull; but he knew nothing about those tow trucks. Strike that.

He knew nothing about the status of the vehicles that were being directed onto the premises. [5] He was there to conduct an inspection, a license check pursuant to authority granted by the statute, and he asked for the required records, which is commonly known as the police book, which could not be produced at that time. However, Mr. Krull had taken down some notes of vehicles that he had purchased. And it was based on these records then that Detective McNulty conducted his search. I wouldn't call it a search, but a verification.

Had he only verified the four or five vehicles that were indicated on this particular sheet of paper, I think he would have been within his statutory authority; because the statute says first you check the records, then you have the opportunity to verify the records are accurate. It's a two-step process. Now, he didn't do that.

He took those records, and then he said to Mr. Krull, may I look around.

If you recall, my prior finding was that that was not a consent search. Because Mr. Krull, I'm sure being in the business, was aware of the officer's authority under the statute, that he had, if you want to call it, the right,

or at least the ability to go in there and look around in a certain described manner.

[6] So, Mr. Krull really didn't give him consent. He did not give him consent.

MR. MIQUELON: I don't mean to interrupt Your Honor, but I want to get the names straight. Krull was the licensee, Lucas was the guy on the premises.

THE COURT: Reverse that. It is Mr. Lucas on the premises that were purchasing the cars and operating the business. Mr. Krull was really the licensee. I'm sorry.

It was my original finding that Mr. Lucas merely acquiesced, because he had no choice but to allow the officer to look around.

There was no warrant adhered by any officer on the premises, and there was no probable cause based on the facts that I have read, and that I remember from the transcript. There was no probable cause for any of the officers to believe a crime was being committed, or in fact had been committed.

So, we don't get into those kind of situations. The officers were there pursuant to authority granted by a statute. That statute was declared unconstitutional. I don't remember the citation, Bionic Auto Parts and Sales. Fahner-518 Federal supplement 582, decided by Judge Schader, who in his [7] ruling, and that is attached to many of the documents supplied here, went through why that particular statute is unconstitutional.

My original ruling then relying upon that declaration said all of the evidence collected that day should be suppressed.

The appellate court reviewed Judge Schader's ruling, but in the interim—

MR. GARIPPO: You mean the Court of Appeals?

THE COURT: Federal Circuit Court of Appeals reviewed that. And in the interim the statute that was de-

clared unconstitutional had been amended. It had been amended by adding section 5-100-1, 5-403, which in effect Judge Schader told the State they could do based on the decision in deciding the case of Donovan; where you have a particular public interest and the legislature regulating a business, the Appellate Court said that we should review our ruling based on the Circuit Court decision, that's the first issue.

Was the statute unconstitutional, and is it now?

I think our Appellate Court misread the Circuit Court's ruling. They didn't reverse Judge Schader on his ruling of constitutionality— [8] of really the unconstitutionality of that particular section 5-401(e), but they had, and they reversed, because they found no need for injunctive relief.

That's the whole point.

And they specifically declined to address themselves to the constitutionality of section 5-401(e) as it stood before the new sections were added.

All the legislature did was bring our statute in conformity with requirements of the Donovan Case.

And I believe that because this act occurred prior to any additional legislation, and also relying on Judge Schader's ruling that the statute, was at the time Detective McNulty was on the premises, was unconstitutional, and remains so by itself disregarding the fact that it has now been amended. Because these amendments had then spelled out what is the reasonable process of inspection of those premises.

MR. GARIPPO: I hate to interrupt, but so we are following the Court, the Court then is adopting the reasoning of Judge Schader in finding the original statute unconstitutional?

THE COURT: Yes, regardless of any subsequent amendments that have been made. Because the Circuit [9] Court of Appeals said, of course as you know any appellate court



is reluctant to determine an issue of constitutionality if they don't have to. In this case they didn't have to, because the remedy had been supplied by the legislature. So, it's very possible that now section 5-401(e) standing along with the new sections is constitutional, but it wasn't at the time that Officer McNulty was on the premises, and what this case revolves around.

So, my original ruling that this particular section is unconstitutional will stand.

The next issue we have to address directed by the Appellate Court as a result of the Gates' Case, Illinois versus Gates, which talks about the model case of the federal exclusionary rule based on good faith exceptions with the officer acting in good faith, even though his conduct may be in violation of the Fourth Amendment would still allow the evidence to be admissible. The Gates Case is really more related to the Aguilar Case, and the two prong test of whether a warrant or complaint for a warrant is valid, because it deals with an anonymous tip that the officer had that they used to get a search warrant. And Aguilar requires before you could get a search warrant, you have to [10] allege the reliability of the informant, that this person was credible, that there had been information received by the police officers before to indicate what the man was saying to the officers would be sufficient to support a warrant. We don't have that problem here. We don't have a warrant.

So, I don't believe, as brought out in the conclusions of law filed on behalf of the Defendants, that that's an entirely different issue, is not applicable to this particular case.

I think that what the Appellate Court wants me to do, to look at that; we're not dealing with the Gates Case here. The Officers went in relying on the authority granted to them pursuant to a statute. That statute has

now been held unconstitutional. It was unconstitutional at the time, and absent the amendments by the legislature it would still be unconstitutional.

I think that takes care of the two major considerations that was sent back to us by the Appellate Court.

The third one is the standing of Mr. Mucerino. Apparently, he was not originally on the premises at the time the officers entered, but arrived later on, and he was arrested at that time.

[11] Now, this is somewhat unique, because the case cited by the State, which is the Trakas Case, Trakas versus Illinois, somewhat did away with standing, and indicated a new approach to suppression of evidence dealing with whether or not a particular individual had an expectation of the right of privacy in the area that was searched. They also said it had to be raised as almost an affirmative defense on the part of the person seeking to have the evidence suppressed.

But those issues, or that particular issue in Trakas was pursuant to the officer's reasonable belief that a crime had been committed. We're talking about probable cause at this particular point, and in the facts given in our case, there is no probable cause involved. The officers were there strictly in the performance of their duties as almost regulatory officers. They were there to look over the place, and check it out; and it's been determined that they did what they couldn't do, or shouldn't have done.

So, I'm going to have to accept the defendant's premise that we're not dealing with a Fourth Amendment violation, we're dealing with a due process violation.

The Officer in doing what he did, shouldn't [12] have done. And I think anybody on the premises who was subject to any police act should be protected.

Therefore, my original ruling that the motion to suppress should be sustained is reaffirmed.



That's where we stand.

Does anybody want to say anything else?

MS. CESARIO: No.

MR. GARIPPO: No.

THE COURT: Now, what's the State's position on this? I have to enter some sort of definitive order.

MS. CESARIO: Can we have a two week date to see if we're going to appeal it?

THE COURT: I'll enter an order that states that.

We'll have to enter an order that says that my order sustaining the motion to suppress of September 25th, 1981, is sustained again, I guess.

MS. CESARIO: Right. That you accept the Defendants' version all the way down the line?

THE COURT: There are some editorial comments in the recitation of facts, as there are in yours.

I would just as soon let my recitation stand as the finding of this Court based on the law [13] that's been cited. We are still dealing with an unconstitutional statute, regardless of the amendment. Anything that was collected pursuant to that search should be suppressed.

MS. CESARIO: We ask for a two week date, your Honor.

THE COURT: Do you need a little more time to review that?

MS. CESARIO: No, I think that will do.

MR. GARIPPO: With respect to your order then, it's your finding, I believe and help me if I'm wrong, that the issue of good faith is irrelevant here?

THE COURT: Yes.

MR. GARIPPO: Fine.

THE COURT: That's the way I see it, because in the Gates case they were discussing an exception really to the Aguilar requirement.

They're talking about a warrant that was secured based on an anonymous tip to police officers; even though, those anonymous tips proved to be an omen of events to occur, based on the fact they were told certain things would occur, certain things did. They went before a judge and got a warrant issued. We don't have a warrant situation here.

[14] We are dealing strictly with entry onto a premises pursuant to a statute which is unconstitutional. Therefore, I don't think the Gates case is relevant.

MR. GARIPPO: Okay, what is the date you're setting?

THE COURT: She would like to have two weeks.

MS. CESARIO: July 23rd?

THE COURT: Okay.

MR. GARIPPO: Same time, two o'clock?

THE COURT: Yes, that will be fine.

MR. OBBISH: Thank you.

MR. GARIPPO: Thank you.

MR. MIQUELON: Thank you.

MS. CESARIO: Thank you.

[15] Certificate of Official Court Reporter omitted in printing.

Ill. Rev. Stat. 1979, Ch. 95½, Sec. 5-401

5-401. Licensees required to keep records

§ 5-401. Licensees required to keep records. (a) Every person licensed under Chapter 5 of this Act shall maintain for 3 years, in such form as the Secretary of State may by rule or regulation prescribe, at his principal place of business a record of:

1. Every new or used vehicle, used parts or accessories, body, or engine of or for such vehicle purchased, received, or acquired by him, a description of every said vehicle part or accessory including numbers of or other marks of identification, if any, together with the date and the names and addresses of the person from whom each such vehicle, part or accessory was purchased, received or acquired. In the case of a motor vehicle, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identification number in lieu of the engine and serial number and other distinguishing marks, and whether any number thereon have been defaced, destroyed or changed; -

2. Every new or used vehicle, body, chassis or engine of or for such motor vehicle sold, exchanged, or disposed of by him, including numbers of or other marks of identification, if any, together with the date and the names and addresses of the persons to whom each vehicle was sold, exchanged, or disposed of by him. In the case of motor vehicle, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identification number in lieu of the engine and serial number and other distinguishing marks and whether any numbers thereon have been defaced, destroyed or changed;

3. Every vehicle wrecked, dismantled or rebuilt by him and the date of its wrecking, dismantling or rebuilding;

(b) Every licensee shall have in his possession a separate certificate of title assigned to him or other documentary evidence of his right to possession of and for every vehicle, part or accessory in his possession.

(c) Every licensee shall have in his possession a separate salvage certificate issued to him as evidence of his right to possession of any vehicle in his possession.

(d) Every person licensed as a transporter under Chapter 5 of this Act shall maintain for 3 years in such form as the Secretary of State may by rule or regulation prescribe at his principal place of business a record of every vehicle transported by him, including numbers of or other marks of identification thereof, the names and addresses of the persons from whom and to whom such vehicle was delivered and the dates thereof.

(e) Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace officer for inspection at any reasonable time during the night or day. Such inspection may include examination of the premises of the licensee's established place of business for the purpose of determining the accuracy of required records.

Amended by P.A. 78-858, § 1, eff. Jan. 1, 1974; P.A. 78-1205, § 1, eff. Sept. 5, 1974; P.A. 78-1297, § 58, eff. March 4, 1975; P.A. 81-908, § 1, eff. Sept. 22, 1979; P.A. 81-932, § 1, eff. Sept. 22, 1979.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ALBERT G. KRULL and ACTION, IRON & METAL, INC.,  
an Illinois Corporation, *Plaintiffs,*

No. 81 C 4907

v.

TYRONE FAHNER, ATTORNEY GENERAL OF ILLI-  
NOIS, JIM EDGAR, SECRETARY OF STATE OF ILLI-  
NOIS, RICHARD M. DALEY, STATES ATTORNEY OF  
COOK COUNTY, ILLINOIS, RICHARD BRZECZEK,  
SUPERINTENDENT OF THE CITY OF CHICAGO, ILLI-  
NOIS, *Defendants.*

STIPULATION

It is hereby stipulated by and between the Plaintiffs, ACTION, IRON & METAL, INC. and ALBERT G. KRULL, by their respective attorneys, Louis B. Garippo and Miriam F. Miquelon, and the Defendant, RICHARD M. DALEY, States Attorney of Cook County, Illinois, by his attorney Elizabeth Cohen, Assistant State's Attorney, that:

1. Plaintiff, Action, Iron & Metal, Inc., is a corporation licensed to do business in the State of Illinois and has its principal place of business in the State of Illinois. (A true and correct copy of Plaintiff's license is attached as Exhibit A).

2. Plaintiff, Action, Iron & Metal, Inc., is licensed by the State of Illinois, pursuant to Chapter 95½, Section 5-301 (Ill. Rev. Stat., 1979) to engage in the business of acquiring, wrecking, recycling, rebuilding and selling automotive parts.

3. Plaintiff, Albert G. Krull, is a duly authorized agent of Plaintiff, Action, Iron & Metal, Inc.

4. The Defendant, Secretary of State, promulgated Rule 5-401(a) pursuant to the enactment of Chapter 95½, Section 5-401(e), Ill. Rev. Stat., 1979.

5. The licensee has been subjected to administrative searches pursuant to Chapter 95½, Section 5-401(e) and Rule 5-401(a) on several occasions in or about July, 1981. The searches were conducted without warrant or other legal process and without probable cause. If any form of consent was given by Plaintiffs or their agents permitting entry on to the business premises to conduct the aforementioned searches, such consent was predicated upon Plaintiffs' belief that the statutory authority contained in Chapter 95½, Section 5-401 et seq., declared unconstitutional in *Bionic v. Fahner*, No. 80 C 3696, authorized Defendants' or their agents to conduct the above-described searches and seizures.

6. Plaintiffs did not receive any prior notification, either written or oral, regarding the Defendants' or their agents' intentions to enter the business premises on the aforementioned dates.

7. On or about July 20, 1981, Plaintiff, Krull was arrested by agents of the Defendant, Richard Brzeczek. Plaintiff, Krull's arrest directly resulted from the seizure of certain vehicular equipment on July 5, 1981, by agents of the Defendant, Brzeczek during a search conducted pursuant to Chapter 95½, Section 5-401 et seq.

8. Plaintiffs waive their right to demand attorney fees and costs for the preparation and trial of this case at the District Court level only.

9. Plaintiffs are seeking declaratory and injunctive relief only.

Respectfully submitted,

/s/ Louis B. Garippo  
Attorney for Plaintiff,  
Action, Iron & Metal, Inc.

/s/ Miriam F. Miquelon,  
Attorney for Plaintiff,  
Albert G. Krull